



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 00059-00

13 September 2000

L [REDACTED] USN

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your implied request, in your letter of 6 June 2000, to restore the concurrent fitness report for 29 June to 12 December 1998 removed by the Navy Personnel Command (NPC) was not considered, as you have not exhausted your administrative remedies by having the correct regular reporting senior countersign it. You may submit the report, as is, to future selection boards.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the memorandum for the record dated 16 August 2000 and the advisory opinions furnished by NPC dated 24 April, 3 May and 23 August 2000, copies of which are attached. The Board also considered your letter dated 6 June 2000 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice.

The Board found that the contested original fitness report for 1 February to 12 October 1998 should stand. In this regard, they noted that the reporting senior's letter forwarding the supplemental report for the same period did not clarify what, if any, new information caused him to submit it.

The Board did not accept your contention that your date of rank should have been adjusted, to make you two years and five months more junior, when you were recalled to active duty.

They recognized that while Secretary of the Navy Instruction 1427.2B, paragraph 8.a(3) does state that such adjustments may be made, it includes no language requiring a request from the officer concerned. Nevertheless, they found you should have requested adjustment if you wanted it. In this regard, they noted the advisory opinion dated 23 August 2000 indicates the Navy had a standard procedure to notify officers being recalled to active duty of their option to request date of rank adjustment. Your assertion that you were not aware of the option did not persuade the Board that this procedure was not followed in your case.

For the reasons stated above, the Board did not agree with either of your bases for removing your failure by the Fiscal Year (FY) 00 Staff Lieutenant Commander Selection Board, nor did they find any basis to remove your failure by the FY 01 Staff Lieutenant Commander Selection Board or set aside action to effect your discharge from the Regular Navy not later than 1 March 2001.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

16 August 2000

MEMO FOR RECORD

Re: Case [REDACTED], SC, USN, [REDACTED]

PERS-88 [REDACTED] advises that [REDACTED] had a date of rank adjustment from 1 Sep 93 to 1 Sep 94, he would have been below zone, vice in zone, for the FY 00 Staff LCDR Sel Bd.

[REDACTED]
JONATHAN S. RUSKIN
Head, Performance Section



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

59-00

1610
PERS-311
24 April 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED] X, U [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 1 February 1998 to 12 October 1998 and replace it with a concurrent report for the same period. *29 June to 12 December 1998.*

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed both the original and concurrent fitness reports to be on file. They are signed by the member acknowledging the contents of each report and his right to submit a statement. The member indicated he did desire to submit a statement for each report. The member's statement and endorsement for the fitness report for the period 1 February 1998 to 12 October 1998 is properly reflected in his record. No statement has been received by PERS-311 for the fitness report for the period 29 June 1998 to 12 December 1998.

b. The member alleges the original fitness report had a significant impact on his promotion possibility, and was an injustice that caused him to fail to select and the supplemental report gives a more accurate promotion recommendation.

c. The fitness report for the period 1 February 1998 to 12 October 1998 is a Detachment of Individual/Regular report. This report was prepared due to the member's PCS transfer to FISC San Diego. This is a valid report.

d. The fitness report for the period 29 June 1998 to 12 December 1998 is a Detachment of Individual/Concurrent report signed by the reporting senior and countersigned by [REDACTED] his regular reporting senior. Due to the member's PCS transfer on 12 October 1998 [REDACTED] was no longer his regular reporting senior for the period of the report. This report is an invalid report. We have removed the report and returned it to the reporting senior.

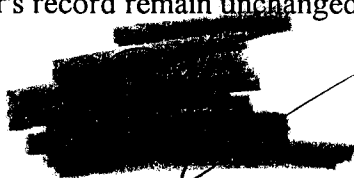
e. Evaluating a subordinate's performance and making recommendations concerning promotion and assignment are the responsibilities of the reporting senior. These duties are accomplished in the fitness report. Nothing provided in the petition demonstrates that the reporting senior acted improperly, violated requirements, or that he abused his discretionary authority in evaluating the member's performance.

f. It is clear that the sole reason for the petition is the member's failure of selection. Failure of selection is not sufficient reason to remove a fitness report.

g. Further review of the member's record revealed the fitness report for the period 13 October 1998 to 30 April 1999 missing from his record. If he will forward a copy of the report we will have it placed in his digitized record.

h. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
Pers 85
3 May 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] ax, USN [REDACTED]

Ref: (a) PERS 311 memo 1610 of 24 Apr 00
(b) SECNAVINST 1427.2B

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of Lieutenant [REDACTED] request to backdate his date of rank and to remove his failure of selection to Lieutenant Commander resulting from the FY-00 Active Lieutenant Commander Staff Corps Promotion Selection Board.
2. Retention of the original fitness report for the period 01 February 1998 to 12 October 1998 has been addressed by reference (a).
3. Lieutenant [REDACTED] request for a backdated date of rank cannot be supported. Reference (b) states that a date of rank adjustment for a break in service can be requested and approved prior to a member reporting on active duty. There is no indication that [REDACTED] attempted to do so prior to his reporting back on active duty. In view of the fact that the date of rank adjustment is not warranted, removal of his failure of selection can not be supported.
4. Recommend disapproval of his request.

[REDACTED]
[REDACTED]
[REDACTED] Liaison, Officer Promotions
and Enlisted Advancements Division



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO

5420
23 Aug 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] SN, [REDACTED]

1. The following comments are provided to detail the normal processing of requests for recall to active duty. Regrettably, records detailing actual documents provided to [REDACTED] no longer exist.

2. Upon approval of a request for recall to active duty, BUPERS would mail correspondence to the officer concerned informing he or she of the approval and providing general information concerning deferment of promotion eligibility, date of rank adjustment, and order status. Additionally, the letter would identify a point of contact for promotion board/eligibility questions. As previously stated, the lack of records precludes a definitive determination that [REDACTED] received the correspondence.

3. Based on the facts presented, it is reasonable to presume that had [REDACTED] requested a date of rank adjustment at the time of recall, a one-year adjustment most probably would have been granted.

[REDACTED]
[REDACTED]
[REDACTED]
Officer Promotion and
Enlisted Advancement
Liaison